

**OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION**

State of Illinois

Illinois Commerce Commission

ORIGINAL
ILLINOIS
COMMERCE COMMISSION
JUN 4 1 20 PM '01
CHIEF CLERK'S OFFICE

People of Cook County

Pat Quinn

)
)
) Docket Nos. 00-0789, 01-0046
) Consolidated
)

POST-HEARING BRIEF OF ILLINOIS POWER COMPANY

Pursuant to the Hearing Examiner's schedule, Illinois Power Company ("Illinois Power") hereby submits its Post-Hearing Brief.

I. INTRODUCTION

In their respective Petitions for Emergency Rulemaking and Expedited Investigation ("Petitions"), the Cook County State's Attorney and Pat Quinn ("Petitioners") requested various amendments to 83 Illinois Administrative Code Part 280 of the Commission's Rules ("Part 280"). The Petitioners asked the Commission to initiate an emergency proceeding for the purpose of establishing emergency rules in light of this past winter's high gas prices. Illinois Power shares the Petitioners' concerns regarding the impact of this past winter's high natural gas prices on customers. Even before this past winter, however, Illinois Power had in place procedures that met or exceeded the provisions in the Petitioners' proposal for an emergency rulemaking.

The Cook County State's Attorney ("the County") proposed language for an emergency rulemaking on issues concerning budget payment plans and enrollment in those plans. Pat Quinn proposed language for an emergency rulemaking prohibiting gas utilities from reporting customers to credit bureaus. The Petitioners and Counsel for Nicor have notified the remaining interested parties in this docket that those parties have reached a settlement on all issues concerning credit bureau reporting.

Counsel for Illinois Power has not been privy to the settlement negotiations and until May 29, 2001, counsel for Illinois Power had not been provided copies of any settlement documents. In light of the reported settlement, Illinois Power will not address herein any issue related to credit reporting. Should the Commission refuse to accept the settlement, however, Illinois Power reserves the right to file additional argument relative to credit reporting. By not providing comment in this Post-Hearing Brief, Illinois Power does not implicitly agree with the idea of adding the proposed credit reporting provisions to the rule.

With regard to the remaining issue, the Petitioners have failed to provide any evidence which would support their request for an emergency rulemaking. The evidence did show, however, that Illinois utilities have already been working with and assisting their customers with regard to the impact of this past winter's high natural gas prices on customers. Illinois Power urges the Commission to deny the Petitions for an Emergency Rulemaking for the reasons set forth below. Moreover, Illinois Power believes that the Petitioners have not demonstrated that the changes they suggest should otherwise be made to Part 280.

II. THE EMERGENCY RULEMAKING REQUEST SHOULD BE DENIED BECAUSE PETITIONERS HAVE FAILED TO MEET THE LEGAL STANDARD FOR AN EMERGENCY RULEMAKING

The Commission must consider whether the Petitioners have met the appropriate legal standard for an emergency rulemaking. Illinois Power believes the Petitioners have failed to do so. Pursuant to the Illinois Administrative Procedure Act, the Commission may adopt an emergency rule only if it reasonably finds that an emergency exists that requires adoption of a rule upon fewer days than is required for a general rulemaking. 5 ILCS 100/5-45. The Petitioners have failed to present any evidence that proves that high gas costs constitute a threat to the public interest, safety or welfare that can be resolved by an emergency change in Part 280. Thus, the Commission should deny the relief requested as the Petitioners have failed to meet the appropriate legal standard which is required in order for the Commission to adopt an emergency rule.

The County contends in its Petition that the rapidly increasing natural gas prices will threaten continued provision of this essential service to many customers and constitutes a threat to the public interest, safety or welfare. Initial Petition, Paragraph No. 8. Illinois Power acknowledges that high natural gas prices could be a threat to the public interest, safety or welfare. However, the relevant question is whether the changes to Part 280 suggested by the Petitioners ameliorate any threat posed by the high gas prices. There must be some threat to the public interest that a change to Part 280 might relieve.

Among other things, Part 280 governs payment, disconnection and payment plans as they apply to interactions between utilities and their customers. It does not govern

how gas commodity is priced. Part 280 already addresses the plight of customers experiencing substantial fluctuation in the amount of their monthly bills, by requiring utilities to offer such customers a budget payment plan. Section 280.120 of Part 280. Section 280.110 of Part 280 requires utilities to grant residential customers the opportunity to enter into deferred payment agreements to enable the customer to retire indebtedness to the utility. In fact, at least one of the suggestions of the Petitioners for changes to Part 280 might itself harm customers and, therefore, the public interest. The Plaintiffs would extend the time for delayed payment plans to the point that some customers might never be able to pay off the arrearages hanging over their heads.

The Petitions should also be denied because the Illinois General Assembly has previously enacted legislative measures to protect gas customers during the cold winter months. For instance, Section 8-205 of the Public Utilities Act prohibits utilities from terminating service to all residential users, including all tenants of mastermeters apartment buildings, for nonpayment of bills on any day a National Weather Service forecast indicates that the temperature will be 32 degrees Fahrenheit or below. 220 ILCS 5/8-205.

Section 8-206 of the Public Utilities Act ("Act") prohibits termination of service for nonpayment between December 1 and March 31 under certain circumstances. 220 ILCS 5/8-206. Sections 8-202 and 8-203 of the Act provide further protection during the winter months. These statutory provisions serve to protect utility customers from termination of service when the termination would cause a threat to the public safety and welfare, i.e., during the cold winter months. In this case, the Petitioners have not shown

the existence of a threat to the public interest that is not already addressed by Part 280 and the Public Utilities Act.

Illinois Power believes the Petitions have failed to meet the requisite legal standard for the Commission to adopt an emergency rulemaking. Statutory and regulatory protections are already in place for the protection of customers of gas utilities.

III. THE PETITIONS FAILED TO CONSIDER THE IMPACT OF THE PROPOSED EMERGENCY RULE UPON COMBINATION UTILITIES AND THEIR CUSTOMERS

Cook County's jurisdiction as well as its concern for customers of gas utilities is limited to certain utilities providing gas to customers within the boundaries of Cook County. The County failed to consider the impact of the proposed emergency rule upon customers of combination utilities since combination utilities do not serve customers in the County of Cook. In addition, the County's sole witness, Roger Colton, admitted he did not look at the budget billing plans of any Illinois utility nor did he talk with any representative of any Illinois utility prior to filing his testimony in this docket. Tr., pg. 290. More significant is the fact that no county has participated in this docket that has jurisdiction over customers of a combination utility, including Illinois Power.

The scope of Part 280, which the Petitioners seek to amend, establishes procedures for gas, electric, water, and sanitary sewer utilities governing eligibility for service, deposits, payment practices and discontinuation of service. Staff Exhibit 1.00, pg. 2. Typically, the provisions of Part 280 apply equally to gas, electric, water and sanitary

sewer utilities. According to Staff, the proposed rule creates a complication as to utilities providing both gas and electric service. *Id.* at pg. 3. Illinois Power shares this concern.

If the proposed emergency rules were adopted, combination utilities such as Illinois Power would face the dilemma of complying with at least three different sets of rules from a billing perspective. IP Exhibit 1.0, pg. 9. There could be one set of rules that apply to only gas customers, another set of rules that would apply only to electric customers, and still a third set that would apply to combination utilities. IP Exhibit 1.0, at pg. 9. The three separate sets of rules would cause combination utilities to at least double their effort to bill gas and electric customers. IP Exhibit 1.0, at pg.9.

In its proposed rule, Section XXX.70, gas utilities are required to offer budget payment plans for longer than twelve months. Initial Petition, Appendix A, pg. 2. In addition, “any pay period offered to customers shall result in lower monthly payments...” This proposed rule illustrates the lack of any significant deliberation by Cook County on the effect the implementation of this emergency rule would have on customers of combination utilities. Illinois Power established that Mr. Colton failed to take into consideration a customer of a combination utility. IP Exhibit 1.1, pg. 3. In his testimony, Mr. Colton failed to acknowledge the two peak seasons that combination utility customers experience. If the proposed emergency rulemaking language is adopted, a customer may never be able to return to non-levelized payment status. IP Exhibit 1.1, pg. 4. It is important to note that one of the primary goals of the levelized payment plan is to help reduce the seasonal impact of utility bills so that customers submit payment for their bills in the same year in which service is incurred. IP Exhibit 1.1, pg. 4. An extension of

payment beyond twelve months only frustrates the goal, especially when coupled with a requirement for lower monthly payments.

IV. ILLINOIS POWER EXCEEDS THE REQUIREMENTS OF THE PROPOSED RULES CONCERNING BUDGET PAYMENT PLANS

The implementation of an emergency rulemaking is to rectify a threat to public interest, safety or welfare. If Illinois Power is providing services above and beyond what is requested in the emergency rulemaking, there is no threat to the public interest, safety or welfare of Illinois Power's customers.

Illinois Power has several payment plans available for customers, such as Levelized Payment Plans ("LPP"), Short Term Agreements ("STA"), and Deferred Payment Agreements ("DPA"). IP Exhibit 1.0, pg. 4. The County seeks an emergency rule requiring gas utilities to permit customers to enroll in a budget payment plan at any time of the year and on the monthly bill. Illinois Power permits its customers to automatically enroll in LPP on the monthly bill, utilize an automated voice-response unit, call the customer service number or enroll on line at IllinoisPower.com, any time during the year. IP Exhibit 1.0, pg. 5. Clearly, the various payment plans currently offered by Illinois Power go beyond the proposed emergency rulemaking language.

The County also seeks an emergency rulemaking requiring customers of gas utilities to enter into short term agreements to avoid having their gas service terminated. Initial Petition, Appendix A, pg. 2. Illinois Power established on the record that its customers have the option to enroll in a Short Term Agreement, which agreement permits

customers to extend the period of time by which to submit payment for their bill. IP Exhibit 1.0, pg. 6. Illinois Power also has a Deferred Payment Agreement option by which customers are offered a period of three to twelve months in order to pay any arrearages on their bill. Again, Illinois Power exceeds the requirements of the proposed rulemaking.

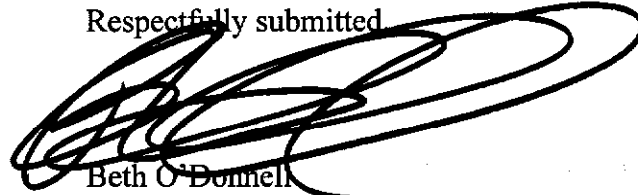
The County also seeks an emergency rulemaking requiring gas utilities to provide its customers with a toll free number for enrollment into a budget plan. Initial Petition, Appendix A, pg. 3. Illinois Power has implemented its Answer Center that operates 24 hours per day, 7 days per week for this and other purposes. Again, Illinois Power exceeds the requirements of the proposed emergency rule.

V. CONCLUSION

There is no evidence in the record that indicates that the Petitioners have sustained their burden. The only evidence in the record supports that they have **not** sustained their burden for an emergency rulemaking. This past winter's high gas costs do not represent a threat to the public interest, safety or welfare that can be resolved by changes to Part 280, whether they be made by an emergency or regular rulemaking. The proposed emergency rules are unnecessary since Part 280 and the Public Utilities Act already protect customers who need alternatives to aid them in paying for and maintaining service.

WHEREFORE, Illinois Power Company respectfully requests the Commission to deny the Petitioners' Petitions for Emergency Rulemaking.

Respectfully submitted

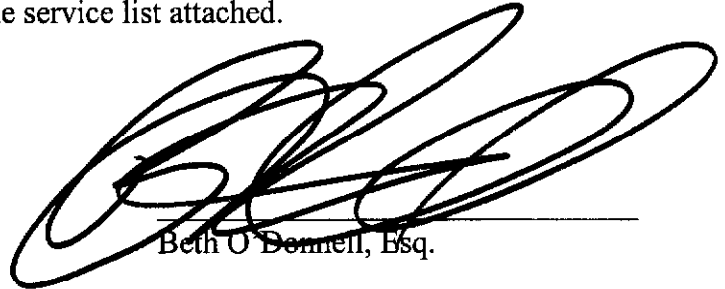
A large, stylized handwritten signature in black ink, appearing to read 'Beth O'Donnell', is written over the text 'Respectfully submitted' and the beginning of the contact information for Beth O'Donnell.

Beth O'Donnell
Illinois Power Company
500 S. 27th Street
Decatur, IL 62521

Gregory Q. Hill
Hughes, Hill & Tenney, L.L.C.
236 N. Water Street, Suite 400
P.O. Box 560
Decatur, IL 62525-0560
hhthill@home.com

CERTIFICATE OF SERVICE

I, Beth O'Donnell, certify that on the 1st day of June, 2001, I served a copy of Illinois Power Company's Post-Hearing Brief by electronic mail and first class mail, from Decatur, Illinois, postage prepaid to the individuals on the service list attached.



Beth O'Donnell, Esq.

Service List

Docket No. 00-0789 & 01-0046 Cons.

Page 1 of 5

ERIC BRAMLET
ATTORNEY
KOGER & BRAMLET, P.C.
316 ½ MARKET ST., PO BOX 278
MT. CARMEL IL 62863

TOM M. BYRNE
AMEREN SERVICE COMPANY
(MC1310)
1901 CHOUTEAU AVE.
ST. LOUIS, MO 63103

ROCCO D'ALLESANDRO
NORTHERN ILLINOIS GAS COMPANY
D/B/A NICOR GAS
1844 FERRY RD.
NAPERVILLE, IL 60563

LEIJUANA DOSS
ASSISTANT STATE'S ATTORNEY
ENVIRONMENT AND ENERGY DIVISION
COOK COUNTY STATE'S ATTORNEY'S OFFICE
69 W. WASHINGTON, STE. 700
CHICAGO, IL 60602

GERARD T FOX
ATTORNEY
NORTH SHORE/PEOPLES GAS
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

MATHEW A GREENE
ATTORNEY
NORTH SHORE/PEOPLES GAS
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

Service List

Docket No. 00-0789 & 01-0046 Cons.

Page 2 of 5

EDWARD J. GRIFFIN
ATTORNEY
DEFREES & FISKE
200 S. MICHIGAN AVE., STE. 1100
CHICAGO, IL 60604

DARCY HACKEL
ALLIANT ENERGY
PO BOX 192
222 W. WASHINGTON AVE.
MADISON, WI 53701-0192

JAMES HINCHLIFF
ATTORNEY
NORTH SHORE/PEOPLES GAS
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

ANDREW G. HUCKMAN, ESQ.
OFFICE OF GENERAL COUNSEL
ILLINOIS COMMERCE COMMISSION
160 NORTH LASALLE ST., STE. C-800
CHICAGO, IL 60601-3104

KAREN M. HUIZENGA
MIDAMERICAN
106 EAST SECOND STREET
DAVENPORT, IA 52801

RONALD D JOLLY
ASSISTANT CORPORATION COUNSEL
DEPT. OF LAW
CITY OF CHICAGO
30 N. LASALLE, STE. 900
CHICAGO, IL 60602-2580

Service List

Docket No. 00-0789 & 01-0046 Cons.

Page 3 of 5

PAUL N. KELLER
ATTORNEY
CITY OF PARK RIDGE
505 BUTLER PLACE
PARK RIDGE, IL 60068

MARY KLYASHEFF
ATTORNEY
NORTH SHOE/PEOPLES GAS
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

DAN E. LONG
UNITED CITIES GAS COMPANY
960 CLOCK TOWER, STE. H
SPRINGFIELD, IL 62704

STEPHEN J. MATTSON
ATTORNEY
MAYER, BROWN & PLATT
190 S. LASALLE ST.
CHICAGO, IL 60603-3441

STANLEY L. MORRIS
ATTORNEY
QUINN, JOHNSTON, HENDERSON & PRETORIUS
3 N. OLD STATE CAPITAL PLAZA
SPRINGFIELD, IL 62701

ANGELA O'BRIEN
MAYER, BROWN & PLATT
190 S. LASALLE ST.
CHICAGO, IL 60603

KATIE PAPADIMITRUI
ILLINOIS COMMERCE COMMISSION
160 N. LASALLE ST., STE. C-800
CHICAGO, IL 60601

Service List

Docket No. 00-0789 & 01-0046 Cons.

Page 4 of 5

PATRICK QUINN
1852 N. NASHVILLE
CHICAGO, IL 60707

KENT M. RAGSDALE
MANAGING ATTORNEY
ALLIANT ENERGY
PO BOX 351
200 FIRST ST. SE
CEDAR RAPIDS, IA 52406-0351

CONRAD REDDICK
CITY OF CHICAGO
SUITE 1040
30 N. LASALLE STREET
CHICAGO, IL 60602

STEPHEN G. REVETHIS
OFFICE OF GENERAL COUNSEL
ILLINOIS COMMERCE COMMISSION
160 N. LASALLE, STE. C-800
CHICAGO, IL 60601

W. MICHAEL SEIDEL
ATTORNEY
DEFREES & FISKE
200 S. MICHIGAN AVE., STE. 1100
CHICAGO, IL 60604

NICK T. SHEA
DIRECTOR, RATES & REGULATORY AFFAIRS
CENTRAL ILLINOIS LIGHT COMPANY
300 LIBERTY ST.
PEORIA, IL 61602

MARIE SPICUZZA
ASSISTANT STATE'S ATTORNEY
ENVIRONMENT AND ENERGY DIVISION
COOK COUNTY STATE'S ATTORNEY'S OFFICE
69 W. WASHINGTON, STE. 700
CHICAGO, IL 60602

Service List

Docket No. 00-0789 & 01-0046 Cons.

Page 5 of 5

TIMOTHY P WALSH

ATTORNEY

NORTH SHORE/PEOPLES GAS

130 E. RANDOLPH DR., 23RD FLOOR

CHICAGO, IL 60601